



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 230504-0121]

RIN 0648-BI79

### International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), NMFS issues this final rule establishing fish aggregating device (FAD) design requirements, International Maritime Organization (IMO) number requirements, and bycatch restrictions for sharks and rays. This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

**DATES:** This rule is effective on *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR), as well as the proposed rule (86 FR 55790, October 7, 2021), are available via the Federal e-rulemaking Portal, at [www.regulations.gov](https://www.regulations.gov) (search for Docket ID NOAA-NMFS-2021-0068). Those documents are also available from NMFS at the following address: Sarah Malloy, Acting Regional Administrator, NMFS,

Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the **Classification** section of the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to PIRO at the address listed above and to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

**FOR FURTHER INFORMATION CONTACT:** Rini Ghosh, NMFS PIRO, 808-725-5033.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 7, 2021, NMFS published a proposed rule in the **Federal Register** (86 FR 55790) proposing to establish FAD design requirements, IMO number requirements, and bycatch restrictions for sharks and rays. The 30-day public comment period for the proposed rule closed on November 8, 2021.

This final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC

Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map).

The United States is also a member of the Inter-American Tropical Tuna Commission (IATTC). The convention areas for IATTC and WCPFC overlap in the Pacific Ocean waters within a rectangular area bounded by 50° S. latitude, 4° S. latitude, 150° W. longitude, and 130° W. longitude (“overlap area”). The preamble of the proposed rule provides further detail on United States implementation of WCPFC and IATTC requirements in the overlap area, which are not repeated here.

This final rule implements specific provisions of four recent WCPFC decisions (CMM 2018-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean”; CMM 2018-06, “Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish”; CMM 2019-04, “Conservation and Management Measure for Sharks”; and CMM 2019-05, “Conservation and Management Measure on Mobulid Rays”). The preamble to the proposed rule provides background information on the Convention and the Commission, the provisions that are being implemented in this rule, and the basis for the regulations, which is not repeated here.

## **The Action**

The specific elements of the final rule are detailed below.

### *1. Non-entangling FAD Requirements*

This final rule implements specific FAD design requirements related to net mesh set forth in paragraph 19 of CMM 2018-01. A more recent measure, CMM 2021-01, further revises the non-entangling FAD requirements by prohibiting the use of any mesh net. However, since the new requirements of CMM 2021-01 go into effect on January 1, 2024, the requirements of CMM 2018-01 are being implemented now. NMFS will implement the requirements of CMM 2021-01 in a future rulemaking. Under this final rule, if the FAD design includes a raft (*e.g.*, flat raft or rolls of material) and if mesh netting is used as part of the structure, the mesh netting shall have a stretched mesh size less than 7 cm and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed. Additionally, any netting used in the subsurface structure of the FAD must be tightly tied into bundles (“sausages”) or have a stretched mesh size less than 7 cm in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column. This element of the final rule applies to all purse seine vessels used for commercial fishing for highly migratory species (HMS) on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area). NMFS notes that Paragraph 19 of CMM 2018-01 states that WCPFC members shall ensure that the specific FAD design requirements apply to any FAD to be deployed in, or that drifts into, the Convention Area. NMFS determined that it would be impractical to require vessel owners and operators to ensure that non-conforming FADs do not drift into the Convention Area. Thus, the FAD design requirements of this final rule apply only to FADs that are to be deployed or redeployed (*i.e.*, placed in the water).

## *2. IMO Number Requirement*

Existing regulations at 50 CFR 300.217(c) apply to all U.S. fishing vessels (including those participating in the fisheries of the U.S. Participating Territories) that are used for commercial fishing for highly migratory fish stocks in the Convention Area either on the high seas or in waters under the jurisdiction of a foreign nation, and the

gross tonnage of which is at least 100 GRT or 100 GT (gross tons). The owner of any such fishing vessel is required to ensure that an “IMO number” has been issued for the vessel. The preamble to the proposed rule provides background information on the IMO ship identification number scheme and associated instructions, which are not repeated here. The existing regulations include a process for fishing vessel owners to request an exemption from NMFS if they are unable to obtain IMO numbers. When NMFS receives such a request it will review it and assist the fishing vessel owner as appropriate. If NMFS determines that it is infeasible or impractical for the fishing vessel owner to comply with the requirement, NMFS will issue an exemption from the requirement for a specific or indefinite amount of time. The exemption will become void if ownership of the fishing vessel changes. Under this final rule, the existing regulations are revised to include vessels less than 100 GRT down to a size of 12 meters in overall length (LOA). This element of the final rule applies to vessels used for commercial fishing for HMS in the Convention Area, including the overlap area, either on the high seas or in waters under the jurisdiction of a foreign nation.

### *3. Revised Purse Seine Restrictions for Oceanic Whitetip Shark and Silky Shark and Additional Shark Release Requirement for All Vessels*

This final rule also implements two specific provisions of CMM 2019-04 (1) an exemption from existing no-retention requirements for purse seine vessels in specific cases where an oceanic whitetip shark or silky shark is not seen during fishing operations and are delivered into the vessel hold; and (2) a requirement for vessels to haul any incidentally caught sharks alongside the vessel before being cut free in order to facilitate species identification. The Commission amended this CMM in December 2022. The revisions that would likely require regulatory action include provisions that prohibit longline vessels operating in the Convention Area between 20° North and 20° South from using wire trace as branch lines and from using shark lines or branch lines running off of

the longline floats or drop lines, and a requirement for longline vessels to follow certain guidelines when releasing sharks that are not retained. Both of these provisions become effective January 1, 2024. NMFS plans to implement the applicable new requirements in a separate rulemaking.

Existing regulations under 50 CFR 300.226 prohibit the crew, operator, and owner on all vessels used for commercial fishing for HMS in the Convention Area from retaining on board, transshipping, storing, or landing any part or whole carcass of an oceanic whitetip shark or silky shark that is caught in the Convention Area, unless collected by an on-board observer. This final rule establishes an exemption for purse seine fishing vessels in the case of any silky shark or oceanic whitetip shark that is not seen during the fishing operation and is unknowingly delivered into the vessel hold and frozen. In such a case, oceanic whitetip shark and silky shark could be stored and landed, but the vessel owner or operator would be required to notify the observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports the responsible government authority is the NOAA Office of Law Enforcement divisional office nearest to the port. Under this final rule, it is prohibited to sell or barter oceanic whitetip shark and silky shark surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies.

This final rule also establishes a requirement that any shark be hauled alongside the vessel before being cut free (if on a line or entangled in a net) in order to facilitate species identification by the observer on board. This element of the final rule only applies to vessels on which a WCPFC observer or camera monitoring device are present on board.

Both of these elements of the final rule apply to all U.S. vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area).

#### *4. Fishing Restrictions for Mobulid Rays*

This final rule also implements specific requirements of the provisions of CMM 2019-05 for mobulid rays, including the following five elements:

- 1) Owners and operators are prohibited from setting on a mobulid ray if the animal is sighted prior to a set;
- 2) Owners and operators are prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a mobulid ray;
- 3) Owners and operators are required to release any mobulid ray unharmed, as soon as possible, in a manner that results in the least possible harm to the individuals captured, taking into consideration the safety of the crew;
- 4) Owners and operators are required to allow observers to collect biological samples of mobulid rays, if requested to do so by a WCPFC observer; and
- 5) An exemption for purse seine vessels from elements 2 and 3<sup>1</sup> in specific cases where a mobulid ray is not seen during fishing operations and is unknowingly delivered into the vessel hold. In such cases, a vessel owner or operator will be required to notify the observer on board, and surrender the whole mobulid ray at the first point of landing, to the responsible government authorities, or other competent authority, or discard it. It is prohibited to sell or barter mobulid rays surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies.

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<sup>1</sup> NMFS notes that the preamble to the proposed rule included a typographical error listing element 1 instead of element 3 for this exemption.

The five mobulid ray elements of the final rule apply to U.S. vessels used for commercial fishing for HMS on the high seas and EEZs in the Convention Area (excluding the overlap area).

### **Comments and Responses**

NMFS received two comment letters on the proposed rule. One commenter provided a general statement of support for the proposed rule. The remaining comments are summarized below, followed by responses from NMFS.

*Comment 1:* The American Tunaboat Association (ATA) commented that all ATA vessels are already in compliance with the FAD design requirements in the proposed rule, with one exception. The proposed rule would require that “all FADs on board or deployed from the vessel in the Convention Area comply with the design requirement.” ATA noted that vessels would be working to retrieve old FADs from the water and requested that NMFS modify the rule to make clear that the prohibition would not apply to FADs that have been retrieved for destruction or recycling and that will not be redeployed.

*Response:* NMFS has revised the regulatory text from that included in the proposed rule to clarify that the design requirements only apply to FADs that are to be deployed (i.e., are to be placed in the water) in the Convention Area from a vessel, as specified in the CMM. The new FAD design elements would not apply to FADs that were deployed and in the water before the effective date of this rule. Although the new FAD design elements do not apply to FADs that have been retrieved by vessel owners and operators and are onboard the vessel to be destroyed or recycled, FADs that have been serviced or retrieved must meet the FAD design elements before they are redeployed back into the water.



*Comment 2:* ATA commented that they recognize the proposed FAD design requirements are part of a larger transition over time to fully non-entangling (mesh-free) and eventually biodegradable FADs and they expressed support for the eventual goal of effective biodegradable FADs. ATA noted that more work is needed to transition to biodegradable FADs and recognized that parallel efforts are underway to transition to fully biodegradable FADs in the interim. However, ATA suggested that any transition from the current requirements to fully non-entangling FADs could postpone the transition to biodegradable FADs, and could significantly increase the cost to vessels over the transition period. ATA suggested that focus should instead be directed at enhancing efforts to develop and deploy biodegradable FADs in the short-term.

*Response:* NMFS acknowledges the comment and notes that the WCPFC FAD working group is continuing discussion on the use and development of biodegradable FADs. In December 2021, the WCPFC adopted CMM 2021-01, which includes modifications to the existing non-entangling FAD design requirements and obligates Commission Members to implement fully non-entangling (mesh free) design requirements by January 1, 2024. NMFS plans to implement the modified design requirements in a separate rulemaking. Implementation of the modified design requirements is necessary to satisfy the obligations of the United States under the Convention.

*Comment 3:* ATA expressed support for the element of the proposed rule that would allow a limited exemption for purse seine vessels to the prohibition on the retention of oceanic whitetip sharks and silky sharks if a shark is inadvertently brought into the hold of the vessel.

*Response:* NMFS acknowledges the comment.

*Comment 4:* ATA sought clarification on the element of the proposed rule that would require that sharks be hauled alongside a vessel before being cut free in order to

facilitate species identification. ATA suggested that it would not be practical or safe to bring a purse seine net to the side of a purse seine vessel in order to cut a shark free and that this requirement seems more applicable to longline vessels. ATA noted that the proposed rule correctly acknowledges that for purse seine vessels, it is expected that in most cases, the shark would be released after it is brailed from the net and brought on deck. ATA suggested modifications to the regulation text that would clarify that a shark must be released as soon as possible once it is brought alongside or on board the vessel.

*Response:* The shark release requirements found at 50 CFR 300.226(b) went into effect on March 23, 2015 (80 FR 8807, Feb. 19, 2015). These requirements are not being changed in this final rule. Rather, this final rule simply adds an exemption to the release requirements for sharks that are not sighted prior to being delivered into a purse seine vessel hold (50 CFR 300.226(e)). Separately, under this final rule, NMFS is implementing a new requirement (found at 50 CFR 300.230) to facilitate species identification for sharks that are incidentally caught during fishing operations. This regulation clearly states that the requirement to bring the shark alongside the vessel for identification purposes only applies to sharks that are “not brought on board the fishing vessel,” and only when observers or electronic cameras are available. Thus, NMFS does not believe that further revision to the regulatory text is needed.

*Comment 5:* ATA commented that the prohibition from setting on a mobulid ray is a requirement that may occasionally result in a lost opportunity for a purse seine vessel to make a set and that it will likely have an economic impact on the fleet. ATA noted, however, that ATA vessels will already be seeking to minimize the number of mobulid ray interactions in the purse seine fishery, due to obligations under the Endangered Species Act and that ATA understands the intent of the requirement. The remaining elements of the proposed rule related to mobulid ray interactions are things that ATA members have already committed to implement.

*Response:* NMFS acknowledges the potential economic impact that may result from the prohibition against setting on a mobulid ray. These and other potential impacts have been described in detail by NMFS in the EA and RIR associated with this rulemaking. Implementation of the prohibition is necessary to satisfy the obligations of the United States under the Convention.

*Comment 6:* ATA commented that provisions for both sharks and rays use language such as “as soon as possible” and “take all reasonable steps” and raised concerns that such subjective terms have resulted in adverse enforcement actions based on determinations from observer reports in the past. However, ATA stated that it counts on the reasonable application and fair administration of NMFS enforcement powers in such cases.

*Response:* The shark handling and release requirements found at 50 CFR 300.226(b) went into effect on March 23, 2015 (80 FR 8807, February 19, 2015), and NMFS is not modifying those regulations in this final rule. Rather, this final rule implements new handling and release requirements for mobulid rays at 50 CFR 300.229(c). These requirements implement CMM 2019-05, which requires vessels to release mobulid rays alive and unharmed “to the extent practicable...as soon as possible.” Thus, the mobulid ray handling and release regulation implements language directly from the CMM, and is written to be consistent with existing regulations on shark handling and release.

### **Changes from the Proposed Rule**

This final rule includes one substantive change to the regulatory text from the proposed rule. NMFS has revised the regulatory text for FAD requirements at 50 CFR 300.223(b)(4) to clarify that the FAD design requirements will only apply to FADs to be deployed or redeployed (*i.e.*, placed in the water) from a vessel. This final rule also includes editorial corrections in 50 CFR 300.229(e) so that both uses of the term WCPFC

observer are preceded by the word “a”, an editorial correction to 50 CFR 300.229(f) so that the word shark is deleted from the last sentence, and editorial corrections to 50 CFR 300.226(a) and (b) so the inadvertent editorial changes made to the existing regulatory text in the proposed rule are withdrawn.

### **Classification**

The Administrator, Pacific Islands Region, NMFS, has determined that this action is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

#### *Coastal Zone Management Act (CZMA)*

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii, American Samoa, CNMI and Guam on August 2, 2021, for review by the responsible state and territorial agencies under section 307 of the CZMA. Hawaii replied by letter dated August 16, 2021, stating that, because the proposed rule is outside of the jurisdiction of the Hawaii Coastal Zone Management Program’s enforceable policies, it would not be responding to the consistency determination. The CNMI replied by letter dated August 31, 2021, stating that it concurs that the action is consistent with the enforceable policies of CNMI’s coastal management program. Guam replied by letter dated September 28, 2021, stating that based on the information provided, it has determined that the action will be consistent with the enforceable policies of Guam’s Coastal Management Program. No response was received from American Samoa, and thus, concurrence with the respective consistency determinations is presumed (15 CFR 930.41).

#### *Executive Order 12866*

This final rule has been determined to be not significant for purposes of Executive Order 12866.

*Regulatory Flexibility Act (RFA)*

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604 of the RFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

**Significant Issues Raised by Public Comments in Response to the IRFA**

NMFS did not receive any comments specifically on the IRFA. One public comment received on the proposed rule referred to potential economic impacts of the proposed action; see Comment #5 and NMFS' response to that comment above.

**Description of Small Entities to Which the Rule and Specifications Will Apply**

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

This final rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the Convention Area. This includes vessels in the purse seine, longline, tropical troll (including those in American Samoa, the CNMI, Guam, and Hawaii), Hawaii handline, Hawaii pole-and-line, and west coast-based albacore troll fleets. The estimated number of affected fishing vessels is as follows based on the

number of vessels reported in the 2022 U.S. Annual Report Part 1 to WCPFC (for the 2021 fishing year): 19 purse seine vessels, 149 longline vessels, 21 albacore troll vessels, and 1,913 tropical troll and handline vessels. Thus, the total estimated number of vessels that would be subject to the rule is 2,102. As of January 2023, there are 14 purse seine vessels with WCPFC Area Endorsements (*i.e.*, vessels authorized to be used for commercial fishing for HMS on the high seas in the Convention Area), 13 of which are active. The following analysis includes 13 vessels as the baseline, even though the total number of estimated vessels includes the number of 19 purse seine vessels from Annual Report Part 1.

Based on (limited) financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in all the fleets, except the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of revenues for the 13 currently active vessels, by vessel, for 2019-2021 reveals that average annual per-vessel revenue was about \$8,757,000 (NMFS unpublished data on catches combined with fish price data from [https://investor.thaiunion.com/raw\\_material.html](https://investor.thaiunion.com/raw_material.html) accessed on March 22, 2022). Eleven of the active purse seine vessels had estimated average annual revenues of less than \$11 million, and thus are considered to be small entities.

### **Recordkeeping, Reporting, and Other Compliance Requirements**

The reporting, recordkeeping and other compliance requirements of this final rule are described earlier in the preamble. The classes of small entities subject to the requirements and the expected costs of complying with the requirements are described above in the **Classification** section of this final rule.

As described in the Paperwork Reduction Act (PRA) subsection below, this final rule contains a revised collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the PRA.

Non-entangling FAD Element: To comply with this element of the rule, affected vessel owners and operators are required to use specific materials and design specifications for FADs that are to be deployed (*i.e.*, are to be placed in the water) in the WCPFC Convention Area. This element would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all purse seine vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area). A majority of the purse seine vessels are already subject to equivalent requirements in the eastern Pacific Ocean. NMFS has established regulations for measures adopted by the IATTC (see 83 FR 15503, April 11, 2018; 83 FR 62732, December 6, 2018), which became effective on January 1, 2019. Of the 14 purse seine vessels to which this element of the rule would apply, 13 are currently active on both the WCPFC Record of Fishing Vessels (RFV) and the IATTC Regional Vessel Register (RVR), meaning that they are authorized to fish in both the WCPO and the EPO. It is expected that the owners and operators of purse seine vessels on both lists would therefore already be responsible for implementing the FAD design requirements in the EPO, as specified in 50 CFR 300.28(e). All 13 active purse seine vessels currently on the WCPFC RFV are also on the International Seafood Sustainability Foundation (ISSF) ProActive Vessel Register (PVR), and their owners and operators have agreed to comply with ISSF-adopted conservation measures, which include the use of non-entangling FADs or lower entanglement risk FADs. The ISSF lower entanglement risk FADs meet the same design specifications and material requirements in this element of the rule.

Therefore, for the owners and operators of all purse seine vessels that would be subject to the requirement, NMFS expects that there would be no change in the materials they currently use to design FADs.

To the extent that any of those vessels are not already implementing the design specifications, and for any new purse seine vessels that enter the fishery, there would likely be some costs associated with complying with this requirement. However, it is not possible to predict the costs associated with any certainty, as FAD designs vary between vessels, and the availability of materials is expected to vary over time. If specific non-entangling FAD materials were difficult or costly to obtain (*e.g.*, netting with 7 cm mesh size), it could affect a vessel's ability to fish on FADs. In cases where vessels choose to forego fishing on FADs, it could increase operating costs in the form of increased fuel usage to fish on unassociated schools of fish instead of fishing on FADs.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

**IMO Number Element:** This element of the rule requires owners of fishing vessels less than 100 GRT down to a size of 12 meters LOA to obtain an IMO number. This requirement is part of a collection of information subject to approval by OMB under the PRA. The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to vessels used for commercial fishing for HMS in the Convention Area (including the overlap area), either on the high seas or in waters under the jurisdiction of a foreign nation. Existing regulations at 50 CFR 300.217(c) require that vessels at least 100 GRT obtain an IMO number, so most entities that would be required to obtain an IMO number already have them. NMFS estimates that 48 fishing vessels would initially be subject to the expanded requirement, 45 longline vessels and three troll vessels. NMFS has established regulations, at 50 CFR 300.22(b)(3)(iii), which



implement similar requirements for vessels fishing on the high seas in the EPO. NMFS estimates that all but one of the 48 fishing vessels initially subject to this element of the final rule are already subject to the IATTC IMO requirements in the EPO. NMFS projects that as fishing vessels enter the fishery in the future, roughly four per year would be required to obtain IMO numbers.

The requirement to obtain an IMO number would be a one-time requirement; once a number is issued for a vessel, the owner of the vessel would be in compliance for the remainder of the vessel's life, regardless of changes in ownership. Completing and submitting the application form (which can be done online and requires no fees) would take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each affected entity would be about \$14. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Shark Element (1): This element of the rule provides an exemption to existing oceanic whitetip and silky shark prohibitions in the case where an oceanic whitetip shark or silky shark is not seen during fishing operations and is unknowingly delivered into the vessel hold and frozen as part of a purse seine operation. It would not establish any new reporting and recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies specifically to U.S. purse seine vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area). It is not expected that these requirements would cause any modification to the vessels' fishing practices, as the expectation is that they would not have seen the animal prior to delivering it into the hold. Although this element would

relieve vessel owners and operators from the burden associated with the existing regulation, qualifying for the exemption could bring modest costs. If the option of discarding the animal at the first point of landing or transshipment is taken, no additional costs would be expected. If the option of surrendering the shark to the responsible government authority is taken, there could be moderate costs in terms of crew labor that may be necessary to contact the authority and surrender the shark. Under either option, the cost would be offset by the reduced risk of monetary fines that may be associated with current regulations prohibiting the retention of oceanic whitetip sharks and silky sharks.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Shark Element (2): This element of the rule requires that any incidentally caught shark not brought on board be hauled alongside the vessel before being released in order to facilitate better species identification by the WCPFC observer on board. It would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area); however, it would only apply to vessels on which an observer or electronic monitoring camera is present, so for the foreseeable future, it is expected that it would apply only to purse seine and longline vessels, which currently carry observers.

For purse seine vessels, NMFS expects that this requirement would not be frequently applicable. Although an observer would be present on 100 percent of trips, in most cases, the fish would be released only after it is brailed from the purse seine and brought on deck. As stated above, NMFS notes that observers on purse seine vessels

already routinely identify sharks that are brailed and brought on board the vessel. In the infrequent circumstance that the vessel operator and crew determined that it is possible to release the fish before it is brought on deck, greater intervention and time on the part of crew members would be needed to ensure that the observer is able to properly identify species. To the extent that time could otherwise be put to productive activities, this could lead to increased costs associated with labor.

For longline vessels, it is expected that an observer would be present on about 20 percent of trips for deep-set trips and 100 percent on shallow-set trips<sup>2</sup>. In these cases, it is expected that under current fishing practices, the fish would be released as it is brought to the side of the vessel, such as by cutting the line or removing the hook. In these cases, minimal if any costs would be incurred.

This element of the rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (1): This element of the rule prohibits vessels from targeting mobulid rays or making a set in instances in which a mobulid ray is sighted prior to a set. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the exclusive economic zones in the Convention Area (excluding the overlap area). U.S. fishing vessels in the WCPO are not known to intentionally target mobulid rays, although they are caught incidentally in both the purse seine and longline fleets and less frequently in the tropical handline and pole-and-line fleets. It is unknown whether U.S. purse seine vessels currently intentionally set on mobulid rays. If such a

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<sup>2</sup> Based on average percent observer coverage on Hawaii longline vessels, 2017-2021.

practice does exist, this element would be expected to impact purse seine vessels by prohibiting them from setting on a mobulid ray if sighted prior to a set.

In the event that a mobulid ray is sighted prior to a desired set, complying with this requirement could cause forgone fishing opportunities and result in economic losses. It is difficult to project the frequency of pre-set mobulid ray-sighting events because such events are not recorded. Historical data on mobulid ray interactions are available, but interactions are not equivalent to pre-set sightings. According to anecdotal information from purse seine vessel operators, a majority of mobulid rays are not seen before the set commences. Nonetheless, historical mobulid ray interaction rates can provide an upper bound estimate of the frequency of pre-set mobulid ray sighting events in the future. Based on unpublished observer data from the Pacific Islands Forum Fisheries Agency (FFA) observer program between 2015 and 2019, mobulid ray interactions occur in approximately 3 percent of observed purse seine sets on average in the purse seine fishery (100 percent of sets were observed in 2015-2019). In those instances where a mobulid ray is sighted prior to a set, the vessel operator would have to wait and/or move the vessel to find the next opportunity to make a set. The consequences in terms of time lost, distance travelled, and associated costs cannot be projected with any certainty, but a range of possible outcomes can be foreseen. At worst, the operator would lose the opportunity to make a set for the remainder of the day. At best, the operator would find an opportunity to make a set soon after the event—that is, on the same day, and limited costs would be incurred. This requirement is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

**Mobulid Ray Element (2):** This element of the rule prohibits vessels from retaining on board, transshipping, or landing any mobulid ray in the Convention Area. This requirement would not impose any new reporting or recordkeeping requirements

(within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). U.S. fishing vessels in the WCPO are not known to intentionally target mobulid rays, although they are caught incidentally in both the purse seine and longline fleets and less frequently in the tropical handline and pole-and-line fleets. There are no recorded interactions with mobulid rays in the tropical troll or albacore troll fleets.

Unpublished observer data from the FFA observer program and NOAA's Pacific Islands Observer program indicate that between 2015 and 2019, an estimated two mobulid rays were retained per year in the purse seine fishery, on average, and in the longline fishery, it is estimated that that less than one mobulid ray was retained per year, on average. The remainder of the mobulid catch was released alive or discarded dead. In the tropical handline and pole-and-line fleets, there were no reported mobulid rays retained between 2015 and 2019. This requirement would foreclose harvesting businesses' opportunity to retain and sell or otherwise make use of any species of mobulid ray that may previously have been retained by U.S. fishing vessels. The consequences in terms of opportunity loss cannot be projected with any certainty; however, available data indicate that there is no history of commercial sale of mobulid rays by U.S. fishing vessels. Additionally, existing requirements under 50 CFR 300.27 prohibit vessels from retaining on board, transshipping, storing, landing, or selling any part or whole carcass of a mobulid ray that is caught in the IATTC Convention Area in the EPO. For those vessels that fish in both the WCPO and EPO, it is expected that they would already be responsible for implementing the retention prohibition requirements included in the EPO.

This element of the rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (3): This element of the rule requires vessels to release any mobulid ray caught in the Convention Area as soon as possible and in a manner that results in as little harm to the animal as possible, without compromising the safety of any persons. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). The requirement could bring costs in the form of reduced efficiency of fishing operations if vessels were required to change their release/discard practices relative to current practices.

For purse seine vessels, it is expected that in most cases, the animal would be released after it is brailed from the purse seine and brought on deck. In these cases, the labor involved would probably be little different than current practice for discarded rays. If the vessel operator and crew determined that it is possible to release the animal before it is brought on deck, this would likely involve greater intervention and time on the part of crew members, which would be costly to the extent that time could otherwise be put to productive activities.

Existing regulations under 50 CFR 300.27 require that vessels promptly release any mobulid ray caught in the IATTC Convention Area, unharmed, and as soon as it is seen in the net or on deck. As noted above, most of the purse seine vessels registered on the WCPFC RFV are also registered to fish on the IATTC RFV, and fish in both the WCPO and the EPO, so it is expected that those vessels would already be responsible for implementing the release requirements in the EPO.

For longline, tropical handline and pole-and-line vessels, it is expected that the animal would be quickly released as it is brought to the side of the vessel, such as by cutting the line or removing the hook. In these cases, minimal if any costs would be incurred.

This element of the rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (4): This element of the rule is a limited exemption from the mobulid retention prohibition and the mobulid release requirement in that vessel owners and operators would be relieved of those requirements in those cases where a WCPFC observer collects, or requests assistance to collect, a sample of a mobulid ray, if requested to do so by a WCPFC observer. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). Under existing regulations, operators and crew of vessels with WCPFC Area Endorsements are already required to assist WCPFC observers in the collection of samples. This element of the rule would effectively expand that requirement – specifically for mobulid rays – to vessels not required to have WCPFC Area Endorsements. This element may bring additional costs to fishing businesses because it may require the owner, operator, and crew to assist the observer in the collection of samples if requested to do so by the observer. It is not possible to project how often observers would request assistance in collecting samples. When it does occur, it is not expected that sample collection would be so disruptive as to substantially delay or otherwise impact fishing operations, but the fishing business could bear small costs in

terms of crew labor, and possibly the loss of storage space that could be used for other purposes. It is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (5): This element of the rule provides a limited exemption to elements 2 and 3 in specific cases where a mobulid ray is not seen during fishing operations and is unknowingly delivered into the vessel hold and frozen. It would not establish any new reporting and recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below.

This element of the rule applies specifically to U.S. purse seine vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area). It is not expected that these changes would cause any modification to the vessels' fishing practices, as the expectation is that they would not have seen the animal prior to delivering it into the hold. Although this element would relieve vessel owners and operators from the burden associated with the existing regulation, the steps for discarding or surrendering the animal could bring modest costs. If the option of discarding the animal at the first point of landing or transshipment is taken, no additional costs would be expected. If the option of surrendering the mobulid ray to the responsible government authority is taken, there could be moderate costs in terms of crew labor that may be necessary to contact the authority and surrender the animal. Under either option, the cost is would be offset by the reduced risk of monetary fines.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Disproportionate Impacts



Small entities would not be disproportionately affected relative to large entities. Nor would there be disproportionate economic impacts based on home port. As indicated above, there could be disproportionate impacts according to vessel size for the IMO number requirement.

#### Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with or duplicate these regulations. NMFS has identified several Federal regulations that overlap with the final rule. These include: the non-entangling FAD requirements, which overlap with existing EPO regulations at 50 CFR 300.28(e); the IMO number requirements, which overlap with existing EPO regulations at 50 CFR 300.22(b)(3)(iii); the purse seine shark retention requirements, which overlap with existing EPO regulations at 50 CFR 300.27(f); and the mobulid ray requirements, which overlap with existing EPO regulations at 50 CFR 300.27(i). The regulations for the EPO apply when vessels fish in the EPO, including the area of overlapping jurisdiction between the IATTC and the WCPFC (overlap area). Aside from the IMO number requirements, the regulations under this final rule apply in the WCPO, excluding the overlap area. The revised IMO number requirements in this rule also apply in the overlap area.

#### Alternatives to the Final Rule

NMFS has not been able to identify any alternatives that would minimize any significant economic impact of the final rule on small entities. NMFS rejected the alternative of taking no action at all because it would be inconsistent with the United States' obligations under the Convention. As a Contracting Party to the Convention, the United States is required to implement the decisions of the Commission. Consequently, NMFS has limited discretion as to how to implement those decisions.

#### **Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared small entity compliance guides for this rule, and will send copies of the appropriate guide to holders of permits in the relevant fisheries. The guide and this final rule also will be available via the Federal e-rulemaking Portal, at [www.regulations.gov](http://www.regulations.gov) (search for ID NOAA-NMFS-2021-0068) and by request from NMFS PIRO (see **ADDRESSES**).

#### *Paperwork Reduction Act*

This final rule contains one collection-of-information requirement that has been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA), temporary Control Number 0648-0798. NMFS will merge the collection-of-information requirement implemented by this final rule with the existing, approved information collection under OMB Control Number 0648-0595, “Western and Central Pacific Fisheries Convention Vessel Information Family of Forms”. This final rule requires the owners of certain fishing vessels to ensure that IMO numbers are issued for vessels. This would be a one-time requirement; no renewals or updates would be required during the life of a vessel. Public reporting burden for a vessel to acquire an IMO number is estimated to average approximately 30 minutes per response. These estimates include the time necessary for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and compiling, reviewing, and submitting the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of

information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved collections of information may be viewed at [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

### **List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

**Authority:** 16 U.S.C. 6901 *et seq.*

Dated: May 5, 2023.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 300 as follows:

### **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

#### **Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species**

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

**Authority:** 16 U.S.C. 6901 *et seq.*

2. In § 300.217, revise paragraph (c)(2) to read as follows:

#### **§ 300.217 Vessel identification.**

\* \* \* \* \*

(c) \* \* \*

(2) The owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area, either on the high seas or in waters under the jurisdiction of any nation other than the United States, shall request and obtain an IMO number for the vessel if the gross tonnage of the vessel, as indicated on the vessel's current Certificate of Documentation issued under 46 CFR part 67, is at least 100 GRT or 100 GT ITC, or less than 100 GRT down to a size of 12 meters in overall length. An IMO number may be requested for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the website of IHS Markit at: *www.imonumbers.lrfairplay.com*.

\* \* \* \* \*

3. In § 300.222, add paragraphs (bbb) through (eee) to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(bbb) Fail to comply with the FAD design requirements in § 300.223(b)(4).

(ccc) Fail to comply with the requirements of any exemption under § 300.226(e).

(ddd) Fail to comply with any of the restrictions, prohibitions or requirements specified in § 300.229.

(eee) Fail to comply with the handling and release requirements in § 300.230.

4. In § 300.223, add paragraph (b)(4) to read as follows:

**§ 300.223 Purse seine fishing restrictions.**

\* \* \* \* \*

(b) \* \* \*

(4) FAD design requirements to reduce entanglements. Owners and operators of fishing vessels of the United States equipped with purse seine gear shall ensure that all

FADs to be deployed (*i.e.*, are to be placed in the water) from the vessel in the

Convention Area comply with the following design requirements:

(i) *Raft*. If the FAD design includes a raft (*e.g.*, flat raft or rolls of material) and if mesh netting is used as part of the structure of the raft, the mesh netting shall have a stretched mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the raft when deployed; and

(ii) *Subsurface*. Any netting used in the subsurface structure of the FAD must be tightly tied into bundles (“sausages”), or if not tightly tied into bundles, then must be made of stretched mesh size less than 7 centimeters and be configured as a panel that is weighted on the lower end with enough weight to keep the netting vertically taut in the water column.

\* \* \* \* \*

5. In § 300.226, revise paragraphs (a) and (b) and add paragraph (e) to read follows:

**§ 300.226 Oceanic whitetip shark and silky shark.**

\* \* \* \* \*

(a) The crew, operator, and owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or silky shark (*Carcharhinus falciformis*) that is caught in the Convention Area unless subject to the provisions of paragraph (c) or (e) of this section.

(b) The crew, operator, and owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any oceanic whitetip shark or silky shark that is caught in the Convention Area as soon as possible after the shark is caught and brought alongside the vessel, and take reasonable steps for its safe release,

without compromising the safety of any persons, unless subject to the provisions of paragraph (c) or (e) of this section.

\* \* \* \* \*

(e) Paragraphs (a) and (b) of this section do not apply in the event that any oceanic whitetip shark or silky shark is not seen by the crew, operator, or owner of a purse seine vessel, or any WCPFC observer on board that vessel, prior to being delivered into the vessel hold and frozen. In such a case, oceanic whitetip shark or silky shark could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any oceanic whitetip shark or silky shark surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

6. Add § 300.229 to read as follows:

**§ 300.229 Mobulid ray restrictions.**

The requirements of this section apply in all exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. For the purpose of this section, mobulid ray is defined as any ray in the family Mobulidae, which includes manta rays and devil rays (*Mobula spp.*).

(a) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot set or attempt to set on or around a mobulid ray if the animal is sighted at any time prior to the commencement of the set or the attempted set.

(b) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of a mobulid ray, unless subject to the provisions of paragraphs (d), (e) and

(f) of this section.

(c) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any mobulid ray, as soon as possible, and must ensure that all reasonable steps are taken to ensure its safe release, without compromising the safety of any persons, unless subject to the provisions of paragraphs (d), (e) and (f) of this section.

(d) Paragraphs (b) and (c) of this section do not apply in the event that a WCPFC observer collects, or requests the assistance of the vessel crew, operator, or owner in the collection of, samples of a mobulid ray in the Convention Area.

(e) The crew, operator, and owner of a vessel must allow and assist a WCPFC observer to collect samples of a mobulid ray in the Convention Area, if requested to do so by a WCPFC observer.

(f) Paragraphs (b) and (c) of this section do not apply in the event that a mobulid ray is not seen by the crew, operator, or owner of a purse seine vessel, or any WCPFC observer on board that vessel, prior to being delivered into the vessel hold and frozen. In such a case, a mobulid ray could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole ray to the responsible government authorities or discard the animal at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any mobulid ray surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

7. Add § 300.230 to read as follows:

**§ 300.230 Shark handling and release.**

(a) The requirements of paragraph (b) of this section apply to all fishing vessels of the United States used for commercial fishing for HMS. The requirements apply in all

exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. The requirements apply only if there is a WCPFC observer or camera monitoring device on board the fishing vessel.

(b) Prior to releasing any shark that is caught during fishing operations and not brought on board the fishing vessel, the owner and operator, without compromising the safety of any persons, shall ensure that the shark is brought alongside the vessel for identification purposes.

[FR Doc. 2023-09966 Filed: 5/11/2023 8:45 am; Publication Date: 5/12/2023]